



REMARKS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re:	Patent Application for Clough	Dated:	2009-07-21
Serial No.:	10/551,894	Art Unit:	1619
Filed:	08/11/2006	Examiner:	Foley, Sharon
For:	Improved Method of Resistance Management for Transgenic Crops	Action:	Response to Restrictive Requirement

REMARKS

This is a response to the Office Action dated June 24, 2009. Applicant has one month to respond and no extension of time is deemed necessary at this time.

The applicant traverses this restriction requirement and elects claims 1-20, 24 and 26 in Group I. The applicant would like to note that this application was found to have unity of invention in the international stage of this application. The claims that are being restricted within this requirement are not fundamentally altered from the international stage. Since the Examiner is applying PCT Rule 13.1 in this restriction, and Rule 13.1 was the same rule applicable to the international stage examination, it does not seem reasonable that the US examiner has reached a different position on unity of invention on the same claim set than did the international examiner. In fact, this examiner has at least for claim 26, determined that the claim fits in both Group I and in Group II. If the Groups I and II are so similar that Claim 26 fits within both groups is this restriction requirement appropriate for claim 26? The applicant believes the restriction requirement is inappropriate for not only claim 26 but for any of the claims.

All claims 1-26 have unity of invention. Specifically, 37 CFR §1.475 indicates,


Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole makes over the prior art.

Claims 1, 20, 22 and claim 25 and 26 each have the technical features of a locus with a first region and second region with a first toxin and at least a second toxin.

The claim 22 according to the examiner is drawn to the method of reducing the incidence of resistance and the Group I is a method of use for controlling insects. The claim 22 does have in its preamble a method of reducing the incidence of resistance of an insect to a first insecticidal toxin. However, the method of control insects in Claim 20 states, "wherein an insect which can develop resistance to the first toxin does not develop resistance to the second toxin.....". Additionally, the locus in Claim 1 states "...wherein a pest which can develop resistance to the first toxin does not develop resistance to the second toxin,..." These claims do not lack unity of invention.

Each has the same special technical features within the same technical relationship. These claims relate to a single general inventive concept under PCT 13.1. The wording of the claims makes it clear that there is unity of invention. A Group II invention does not exist. The Examiner is respectfully requested to reconsider this restriction requirement and pursuant to explanation provided above remove this restriction if appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dana Rewoldt", is written over a horizontal line.

Dana Rewoldt, Reg. No. 33,762
Syngenta Seeds, Inc.
2369 330th Street, Box 500
Slater, IA 50244
(515) 685-5201